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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
 Liability Litigation

No. MD-15-02641-PHX-DGC

SHERR-UNA BOOKER, an individual,
 Plaintiff,

v.

C.R. BARD, INC., a New Jersey
 corporation and BARD PERIPHERAL
 VASCULAR, an Arizona corporation,
 Defendants.

**PLAINTIFF'S MOTION *IN LIMINE* #3
 AND MEMORANDUM IN SUPPORT
 TO EXCLUDE DESCRIPTIONS OF
 FILTERS AS "LIFESAVING" OR
 "LIFE-EXTENDING" DEVICES**

(The Honorable David G. Campbell)

(Oral Argument Requested)

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION *IN LIMINE* TO
 EXCLUDE DESCRIPTIONS OF FILTERS AS "LIFESAVING" OR "LIFE-
 EXTENDING" DEVICES**

Plaintiff moves *in limine* for an Order precluding evidence and argument relating to Bard's IVC Filter devices as "lifesaving" or "life-extending" devices. Such arguments go beyond the indications of the device, and any such testimony or argument is not relevant. Even if it were relevant, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, and/or needlessly presenting cumulative evidence. Fed. R. Evid. 401, 402, 403.

1 In similar litigations regarding products used to prevent bone loss in patients
2 whose cancer metastasized to their bones, the plaintiffs filed motions *in limine* to prevent
3 the defense from describing the drugs or their benefits as a “wonder drug,” “miracle
4 drug,” “prolongs life,” “extends life,” or “cures cancer.” *Stanley v. Novartis Pharm.*
5 *Corp.*, 2014 WL 12573393, at *12 (C.D. Cal. May 6, 2014); *accord Georges v. Novartis*
6 *Pharm. Corp.*, 2013 WL 5217198, at *14 (C.D. Cal. Apr. 4, 2013) (quoting *Bessemer v.*
7 *Novartis Pharmaceuticals Corp.*, No. MID–L–1835–08–MT (N.J. Sup. Ct. Law Div.
8 June 11, 2010) (unpub. order)). Courts granted these motions and prevented the defense
9 from so describing its drugs. Such arguments and opinions are both unverifiable and
10 subjective, rendering the probative value of these opinions limited at best – they certainly
11 offer no insight into or support of the efficacy of Bard’s IVC filter’s implanted in Ms.
12 Booker. *See, e.g., Stanley*, 2014 WL 12573393, at *12.

13 For the same reasons, Bard should not be allowed to describe its IVC filters as
14 “life-saving” devices or any variation of its “filters save lives” defense. IVC filters are
15 designed to prevent blood clots from traveling from the lower extremities of the body
16 through the heart and to the lungs. Any other presumed benefit of IVC filters is
17 speculative and outside the scope of the product’s Instructions for Use. Suggesting
18 “filters save lives” is no different than the other products-liability defendants stating that
19 its’ product prolongs or extends life; these are subjective opinions. *See Stanley*, 2014 WL
20 12573393, at *12; *Georges*, 2013 WL 5217198, at *14 (holding that defendant “may not
21 offer unverifiable, subjective opinions from its experts, such as Aredia or Zometa is a
22 ‘wonder drug,’ ‘miracle drug,’ ‘prolongs life,’ ‘extends life,’ or ‘cures cancer.’”). As the
23 *Georges* Court noted, “[t]he probative value of these opinions is limited because the
24 opinions offer no insight into the [products’] efficacy, and the risk of prejudice is high
25 because the claims have not been proven.” *See Stanley*, 2014 WL 12573393, at *12
26 (C.D. Cal. May 6, 2014).

27 There is no evidence in this case that Ms. Booker’s IVC filter saved her life or
28 even stopped a clot from traveling to her heart or lungs. Any suggestion that these

1 devices are “life-saving” is more prejudicial than probative in the case at bar and should
2 be excluded from the trial.

3 RESPECTFULLY SUBMITTED this 26th day of January, 2018.

4 GALLAGHER & KENNEDY, P.A.

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15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 26th day of January, 2018, I electronically transmitted
17 the attached document to the Clerk's Office using the CM/ECF System for filing and
18 transmittal of a Notice of Electronic Filing.

19 /s/ Gay Mennuti
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